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THE LAW SCHOOL. — A matter that should be of particular interest to the profession of law generally is the memorial pamphlet to Dean Thayer recently published by the Harvard Law School Association. The pamphlet is intended to describe Thayer's work as Dean and as law teacher, and the work of the School under his leadership. It contains a reproduction of the portrait that now hangs in Langdell Hall, together with a note of the proceedings on its presentation to the School, Mr. Dunbar's sketch of Thayer's life, Thayer's last report as Dean to the President of the University, reprints of his articles "Public Wrong and Private Action," "Judicial Administration," "Observations on the Law of Evidence," and "Liability Without Fault," and an account of Roscoe Pound, Thayer's successor in the Deanship. Dean Pound's brief address on the acceptance of the portrait is noteworthy:

"The law teachers of the second third of the nineteenth century, whose portraits hang in the reading room of Austin Hall, had to do with a body of rules received from the mother country, which, though they had been selected and adapted to America, were received and conceived of as rules, proved by their antiquity and justified in that they afforded a certain basis for human conduct even if sometimes an arbitrary one. It was enough for this generation of teachers to take the body of legal rules as they found it, to arrange if for convenient exposition, and to set forth these rules in such form as to enable the student to grasp them. We were still primarily an agricultural country. Problems of urban life were not of moment until after the Civil War, and were not pressing

till the last decade of the century. A body of rules governing property and contract and the relatively simple wrongs known to a simple, homogeneous, law-abiding community sufficed for a legal system.

"The law teachers of the last third of the nineteenth century, whose portraits hang in this hall, had a more difficult task. It was for them, as for their predecessors, to expound a received body of law. But they could not take it wholly as they found it, nor could they be content with the relatively crude systematic arrangement of the law which sufficed for their predecessors. In all but a few jurisdictions the system of elective judges had gradually altered the character of the bench; the dockets of our appellate tribunals were choked with arrears; lawyers were beginning to be men of business quite as much as counsellors-at-law. Thus the machinery of judicial finding of law was no longer equal to the whole task imposed upon it, while at the same time the expansion of business, the development of industry, and the great mechanical advance that came in the last half of the nineteenth century made the law complex and compelled us to break over the simple procedural categories that had sufficed in the past. The teacher of law was compelled to work out analytical and historical methods; to work over the traditional mass of rules, putting them into logical coherence where possible and pointing out the historical reasons for anomalies that resisted analysis. And yet this period was closely connected with the foregoing. In each the public was chiefly concerned in certain, stable, sharply outlined rules, and the law had chiefly to secure property and contract.

"When Ezra Thayer came to teach law, thoroughly grounded in the analytical and historical methods of his teachers, the difficulty of the task had grown once more. He again could not take things wholly as he found them. New demands upon the law were making. It was no longer enough to secure property and contract. Wider interests of all kinds were clamoring for recognition, and society was calling upon the law to secure them. Administrative tribunals were springing up on every hand to compete with the courts in the administration of justice, and rising professions seeking a place in the sun were contesting the political hegemony of the bar. The teacher of law was compelled to take account of much more than the traditional common law materials and to have many weapons in his armory besides analysis and history. Others have told on other occasions how resolutely, how loyally, how tirelessly Thayer set himself to this task. In a brief five years of service he had definitely put the teaching of law in America in the path which it must pursue in another stage of development. Yet he was as closely connected with those who went before him in spirit as he was in time, and his portrait hanging beside theirs may remind us that he marks the end of one stage as well as the beginning of the other; it may remind us of that solid continuity of growth from which alone a permanent structure can result.

"Ezra Thayer's portrait belongs with those of James Bradley Thayer, and Gray and Ames in another respect. Like them he belonged to the period of scholarly lawyers with cultivated interests outside of the law; to the period when the multiplication of legal literature and complexity of legal systems and pressure of novel demands upon the law had not gone so far as to cut the law teacher off wholly from the humanities.

"As we look upon Thayer's portrait, hanging beside those of Langdell and Ames, we may be reminded of another difference between the task to which Thayer was called and that which confronted those who went before. In Langdell's time the small, homogeneous group of mature, college-trained men chiefly from New England, brought up to be self-reliant individualists, raised few problems of administration. The rapid growth of the School in numbers under Ames, bringing to it a large body of students from the whole English-speaking world, with little cohesion, many of them trained in college to be anything but self-reliant, called for a large measure of administrative activity. But this

situation grew up so gradually that the function of the Dean as a sort of father to the student body — the zealous and generous performance whereof shortened the years of Ames — was a crushing weight on the shoulders of Thayer, already called upon to bear heavy burdens in teaching and in molding new policies. While we are proud to think that the School could command the loyal, whole-hearted service of Ezra Thayer even at the cost of such a life, may we escape some feeling of humiliation? Was it necessary for a great university to put upon a highly organized, sensitive, conscientious nature the staggering burden of teaching, planning, and administering which fell upon him? It was a hard fate that sent him to the headship of the School at a time when the proportion of teachers to students had become too small, when the law was for a season in a state of fluidity, making teaching doubly difficult, when it had not yet been perceived that a large and heterogeneous body of students could not longer be dealt with by the direct contact and personal methods that had obtained in the past. It was indeed as if a race horse, having run his allotted course with all the skill and endurance that breeding and training had given him, were to be put for the rest of the day to pulling a plow.

"May his portrait urge upon those who remain and those who come after the duty of seeing to it that his devoted labors have not been in vain, of striving loyally that the passing of those who made the School what it was in the last century shall not mean the passing from these halls of what Maitland called 'the glory of Bologna, the glory of Bourges, and the glory of Harvard.'"

It is striking that the changes that Dean Pound sets forth should be taking place just as the School is completing the first century of its existence; but that striking thing is true, for the School was founded in the year 1817. A celebration of the centennial anniversary of that event, which is in preparation for next June, is hoped to give an opportunity as well for reunion meetings of many Law School classes as for the presentation of the School's work to the profession generally.

SUSPENSION OF SENTENCE. — An historical question of great practical application to-day has just been answered by the Supreme Court in a decision holding that federal courts have no power to suspend the sentence of a convicted person during good behavior.[1] There had been a split of opinion among the state courts as to whether the common law conferred on them this power.[2] In the absence of express legislation, the judicial power of the federal courts must be determined in the light of the common law and of the history of our institutions anterior to and at the adoption of the Constitution and with due regard to the long exercise of claimed power.[3] Down through the eighteenth century trial courts had no power to grant new trials, and the verdict was not reviewable upon the facts by any higher tribunal. To avoid error or miscarriage of justice, the courts were accustomed to suspend sentence for various reasons.[4]

[1] *Ex parte* United States, Petitioner, U. S. Sup. Ct., Oct. Term, 1915, No. 11 original. For a fuller statement, see RECENT CASES, p. 396.

[2] See 25 HARV. L. REV. 739.

[3] United States *v.* Reid, 12 How. 361; United States *v.* Nye, 4 Fed. 888. See 2 FOSTER, FEDERAL PRACTICE, 1615. The same construction has been applied in state courts. State *v.* Harmon, 31 Ohio St. 250, 258; Callanan *v.* Judd, 23 Wis. 343, 349.

[4] 2 HALE, PLEAS OF THE CROWN, c. 58, p. 412; 2 HAWKINS, PLEAS OF THE CROWN, c. 51 § 8; BLACKSTONE, COMMENTARIES, Book IV, c. 31, pp. 394–95; 1 CHITTY, CRIMINAL LAW, 2 ed., 758.